

TWENTY-FIRST DAY - FEBRUARY 6, 2004**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
SECOND SESSION****TWENTY-FIRST DAY**

Legislative Chamber, Lincoln, Nebraska
Friday, February 6, 2004

PRAYER

The prayer was offered by Senator Janssen.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Hudkins who was excused; and Senators Brashear, Bromm, Brown, Byars, Landis, Maxwell, Preister, Raikes, and Wehrbein who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twentieth day was approved.

**SELECT COMMITTEE REPORT
Enrollment and Review**

LEGISLATIVE RESOLUTION 14CA. Placed on Select File.

(Signed) Ray Mossey, Chairperson

NOTICE OF COMMITTEE HEARINGS

Judiciary
Room 1113

Wednesday, February 18, 2004	1:30 p.m.
Scot Ford - Crime Victim's Reparations Committee	
Joe Kelly - Community Corrections Council	
LB 850	Wednesday, February 18, 2004
LB 872	Wednesday, February 18, 2004
LB 958	Wednesday, February 18, 2004
LB 987	Wednesday, February 18, 2004

LB 1060	Wednesday, February 18, 2004	1:30 p.m.
LB 875	Thursday, February 19, 2004	1:30 p.m.
LB 943	Thursday, February 19, 2004	1:30 p.m.
LB 1238	Thursday, February 19, 2004	1:30 p.m.
LB 1251	Thursday, February 19, 2004	1:30 p.m.
Thursday, February 19, 2004		1:30 p.m.
Scot Adams - Community Corrections Council		
William Burgess - Community Corrections Council		
Friday, February 20, 2004		1:30 p.m.
Catherine Cook - Community Corrections Council		
Scott Arnold - Crime Victim's Reparations Committee		
Aileen Gruendel - Community Corrections Council		
Julie Hippen - Community Corrections Council		
Robert Lindemeier - Community Corrections Council		
LB 901	Friday, February 20, 2004	1:30 p.m.
LB 1222	Friday, February 20, 2004	1:30 p.m.
LB 1236	Friday, February 20, 2004	1:30 p.m.
LB 1253	Friday, February 20, 2004	1:30 p.m.
LB 876	Wednesday, February 25, 2004	1:30 p.m.
LB 959	Wednesday, February 25, 2004	1:30 p.m.
LB 1085	Wednesday, February 25, 2004	1:30 p.m.
LB 1182	Wednesday, February 25, 2004	1:30 p.m.
LB 1207	Wednesday, February 25, 2004	1:30 p.m.

(Signed) Kermit A. Brashear, Chairperson

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 139A. Introduced by Johnson, 37.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 139, Ninety-eighth Legislature, Second Session, 2004.

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of February 5, 2004, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Heine, Bruce W.
Magellan Midstream Partners

Kissel/Erickson & Sederstrom Associates, LLC
Pork Producers Association, Nebraska (Withdrawn 02/02/2004)

Wurster, Donald F.
National Indemnity Company

Zaenglein, Norbert
Autobody Association, Nebraska

REPORTS

The following reports were received by the Legislature:

Administrative Services, Department of

Annual Budgetary Report for year ended June 30, 2003

Geographic Information Systems (GIS) Steering Committee

Annual Report and Nebraska I-Team Strategic Plan

Health and Human Services System

Customer Service Call Center Annual Report

New Hire Report which discloses the number of employees reported to the Department and the number of matches during the preceding calendar year

Operator's Licenses Suspended Annual Report

State Disbursement Unit Report

MOTION - Return LB 208 to Select File

Senator Kruse moved to return LB 208 to Select File for his specific pending amendment, AM2381, found on page 510.

The Kruse motion to return prevailed with 32 ayes, 0 nays, 7 present and not voting, and 10 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 208. The Kruse specific pending amendment, AM2381, found on page 510, was adopted with 29 ayes, 0 nays, 10 present and not voting, and 10 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 227. The Quandahl pending amendment, AM2236, found on page 357 and considered on page 500, was renewed.

The Chambers pending amendment, FA1443, found on page 501, to the

Quandahl pending amendment, was renewed.

The Chambers amendment lost with 1 aye, 12 nays, 29 present and not voting, and 7 excused and not voting.

Senator Chambers offered the following motion:
Reconsider vote taken on FA1443

Senator Chambers asked unanimous consent to withdraw his motion to reconsider vote taken on FA1443. No objections. So ordered.

The Quandahl pending amendment, AM2236, was renewed.

Senator Quandahl moved for a call of the house. The motion prevailed with 22 ayes, 0 nays, and 27 not voting.

SPEAKER BROMM PRESIDING

The Quandahl amendment was adopted with 25 ayes, 10 nays, 8 present and not voting, 1 absent and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Pending.

STANDING COMMITTEE REPORTS **Business and Labor**

LEGISLATIVE BILL 947. Placed on General File.

LEGISLATIVE BILL 950. Placed on General File.

LEGISLATIVE BILL 251. Indefinitely postponed.

LEGISLATIVE BILL 308. Indefinitely postponed.

LEGISLATIVE BILL 631. Indefinitely postponed.

(Signed) Floyd P. Vrtiska, Chairperson

SELECT FILE

LEGISLATIVE BILL 227. Senator Beutler withdrew his pending amendment, AM2332, found on page 465.

Senator Schimek offered the following amendment:
FA1452

On page 5, by deleting lines 4 through 7.

Senator Schimek moved for a call of the house. The motion prevailed with 29 ayes, 1 nay, and 19 not voting.

Senator Schimek requested a roll call vote on her amendment.

Senator Chambers requested the roll call vote be taken in reverse order.

Voting in the affirmative, 19:

Aguilar	Byars	Jensen	Pederson, D.	Synowiecki
Beutler	Connealy	Kruse	Price	Thompson
Bourne	Foley	Mines	Schimek	Wehrbein
Bromm	Hartnett	Pedersen, Dw.	Stuhr	

Voting in the negative, 17:

Baker	Erdman	Louden	Raikes	Vrtiska
Burling	Friend	McDonald	Smith	
Cunningham	Jones	Mossey	Stuthman	
Engel	Kremer	Quandahl	Tyson	

Present and not voting, 6:

Chambers	Cudaback	Johnson
Combs	Janssen	Schrock

Excused and not voting, 7:

Brashear	Hudkins	Maxwell	Redfield
Brown	Landis	Preister	

The Schimek amendment lost with 19 ayes, 17 nays, 6 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:
Reconsider the vote on FA1452.

SENATOR WEHRBEIN PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 23 ayes, 0 nays, and 26 not voting.

The Chambers motion to reconsider prevailed with 29 ayes, 6 nays, 8 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senator Schimek asked unanimous consent to bracket LB 227 until February 11, 2004. No objections. So ordered.

LEGISLATIVE BILL 353. E & R amendment, AM7155, found on page 311, was adopted.

Senator Vrtiska renewed his pending amendment, AM2367, found on page 467.

The Vrtiska amendment was adopted with 34 ayes, 0 nays, 9 present and not voting, and 6 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 560. E & R amendment, AM7159, printed separately and referred to on page 373, was adopted.

Senator Baker renewed his pending amendment, AM2370, found on page 467.

The Baker amendment was adopted with 32 ayes, 0 nays, 11 present and not voting, and 6 excused and not voting.

Senator Baker offered the following amendment:
AM2490

(Amendments to E & R amendments, AM7159)

- 1 1. Strike sections 2, 29, 38, and 40 and insert the
- 2 following new sections:
- 3 "Sec. 2. Section 30-24,125, Revised Statutes Supplement,
- 4 2002, is amended to read:
- 5 30-24,125. (a) Thirty days after the death of a
- 6 decedent, any person indebted to the decedent or having possession
- 7 of tangible personal property or an instrument evidencing a debt,
- 8 obligation, stock, or chose in action belonging to the decedent
- 9 shall make payment of the indebtedness or deliver the tangible
- 10 personal property or an instrument evidencing a debt, obligation,
- 11 stock, or chose in action to a person claiming to be the successor
- 12 of the decedent upon being presented an affidavit made by or on
- 13 behalf of the successor stating:
- 14 (1) the value of all of the personal property in the
- 15 decedent's estate, wherever located, less liens and encumbrances,
- 16 does not exceed twenty-five thousand dollars;
- 17 (2) thirty days have elapsed since the death of the
- 18 decedent as shown in a certified or authenticated copy of the
- 19 decedent's death certificate attached to the affidavit;
- 20 (3) the claiming successor's relationship to the decedent
- 21 or, if there is no relationship, the basis of the successor's claim
- 22 to the personal property;
- 23 (4) the person or persons claiming as successors under

1 the affidavit swear or affirm that all statements in the affidavit
2 are true and material and further acknowledge that any false
3 statement may subject the person or persons to penalties relating
4 to perjury under section 28-915;

5 (5) no application or petition for the appointment of a
6 personal representative is pending or has been granted in any
7 jurisdiction; and

8 (6) the claiming successor is entitled to payment or
9 delivery of the property.

10 (b) A transfer agent of any security shall change the
11 registered ownership on the books of a corporation from the
12 decedent to the successor or successors upon the presentation of an
13 affidavit as provided in subsection (a).

14 (c) In addition to compliance with the requirements of
15 subsection (a), a person seeking a transfer of a certificate of
16 title to a motor vehicle, motorboat, all-terrain vehicle, or
17 minibike shall be required to furnish to the Department of Motor
18 Vehicles an affidavit showing applicability of this section and
19 compliance with the requirements of this section to authorize the
20 department to issue a new certificate of title.

21 Sec. 29. Section 60-139, Revised Statutes Supplement,
22 2003, is amended to read:

23 60-139. (1) Sections 60-139 to 60-169 apply to
24 all-terrain vehicles as defined in section 60-6,355 and minibikes
25 as defined in section 60-636, including assembled all-terrain
26 vehicles and minibikes. For purposes of sections 60-139 to 60-169,
27 assembled all-terrain vehicle or minibike means an all-terrain
1 vehicle or minibike that is materially altered from its
2 construction by the removal, addition, or substitution of new or
3 used major component parts. Its make shall be assembled, and its
4 model year shall be the year in which the all-terrain vehicle or
5 minibike was assembled.

6 (2) All new all-terrain vehicles and minibikes sold on or
7 after January 1, 2004, shall be required to have a certificate of
8 title. An owner of an all-terrain vehicle or minibike sold prior
9 to such date may apply for a certificate of title for such
10 all-terrain vehicle or minibike as provided in rules and
11 regulations of the Department of Motor Vehicles.

12 Sec. 30. Section 60-301, Revised Statutes Supplement,
13 2003, is amended to read:

14 60-301. For purposes of Chapter 60, article 3, unless
15 the context otherwise requires:

16 (1) Agricultural products means field crops and
17 horticultural, viticultural, forestry, nut, dairy, livestock,
18 poultry, bee, and farm products, including sod grown on the land
19 owned or rented by the farmer, and the byproducts derived from any
20 of them;

21 (2) Apportionable vehicle means any vehicle used or
22 intended for use in two or more member jurisdictions that allocate

23 or proportionally register vehicles and used for the transportation
24 of persons for hire or designed, used, or maintained primarily for
25 the transportation of property. Apportionable vehicle does not
26 include any recreational vehicle, vehicle displaying restricted
27 plates, city pickup and delivery vehicle, bus used in the
1 transportation of chartered parties, or government-owned vehicle.
2 Such vehicle shall either (a) be a power unit having two axles and
3 a gross vehicle weight or registered gross vehicle weight in excess
4 of twenty-six thousand pounds, (b) be a power unit having three or
5 more axles, regardless of weight, or (c) be used in combination
6 when the weight of such combination exceeds twenty-six thousand
7 pounds gross vehicle weight. Vehicles or combinations of vehicles
8 having a gross vehicle weight of twenty-six thousand pounds or less
9 and two-axle vehicles and buses used in the transportation of
10 chartered parties may be proportionally registered at the option of
11 the registrant;

12 (3) Automobile liability policy means liability insurance
13 written by an insurance carrier duly authorized to do business in
14 this state protecting other persons from damages for liability on
15 account of accidents occurring subsequent to the effective date of
16 the insurance arising out of the ownership of a motor vehicle (a)
17 in the amount of twenty-five thousand dollars because of bodily
18 injury to or death of one person in any one accident, (b) subject
19 to the limit for one person, in the amount of fifty thousand
20 dollars because of bodily injury to or death of two or more persons
21 in any one accident, and (c) in the amount of twenty-five thousand
22 dollars because of injury to or destruction of property of other
23 persons in any one accident. An automobile liability policy shall
24 not exclude liability coverage under the policy solely because the
25 injured person making a claim is the named insured in the policy or
26 residing in the household with the named insured;

27 (4) Base jurisdiction means, for purposes of fleet
1 registration, the jurisdiction where the registrant has an
2 established place of business, where miles or kilometers are
3 accrued by the fleet, and where operational records of such fleet
4 are maintained or can be made available. For such purpose, there
5 is hereby adopted and incorporated by reference section 1602 of
6 Article XVI, International Registration Plan, adopted by the
7 American Association of Motor Vehicle Administrators, as revised
8 October 1, 2001;

9 (5) Cabin trailer means any vehicle without motive power
10 designed for living quarters and for being drawn by a motor vehicle
11 and not exceeding one hundred two inches in width, forty feet in
12 length, or thirteen and one-half feet in height, except as provided
13 in subdivision (2)(k) of section 60-6,288;

14 (6) Commercial trailer means any trailer or semitrailer
15 which has a gross weight, including load thereon, of more than nine
16 thousand pounds and which is designed, used, or maintained for the
17 transportation of persons or property for hire, compensation, or

18 profit or designed, used, or maintained primarily for the
19 transportation of property. Commercial trailer and does not
20 include farm trailers, fertilizer trailers, utility trailers, or
21 cabin trailers;

22 (7) Commercial vehicle means any motor vehicle used or
23 maintained for the transportation of persons or property for hire,
24 compensation, or profit or designed, used, or maintained primarily
25 for the transportation of property and does not include farm
26 trucks;

27 (8) Evidence of insurance means evidence of a current and
1 effective automobile liability policy;

2 (9) Farm trailer means any trailer or semitrailer (a)
3 used exclusively to carry a farmer's or rancher's own supplies,
4 farm equipment, and household goods to or from the owner's farm or
5 ranch, (b) used by the farmer or rancher to carry his or her own
6 agricultural products, livestock, and produce to or from storage
7 and market and attached to a passenger car, commercial-licensed
8 vehicle registered for sixteen tons or less, or farm-licensed
9 vehicle, or (c) used by a farmer or rancher to carry his or her own
10 agricultural products, livestock, and produce to and from market.

11 Such trailers shall carry on their license plate, in addition to
12 the registration number, the letter X. Farm trailer does not
13 include a trailer so used when attached to a farm tractor;

14 (10) Farm trucks means trucks, including combinations of
15 trucks or truck-tractors and trailers or semitrailers, of farmers
16 or ranchers (a) used exclusively to carry a farmer's or rancher's
17 own supplies, farm equipment, and household goods to or from the
18 owner's farm or ranch, (b) used by the farmer or rancher to carry
19 his or her own agricultural products, livestock, and produce to or
20 from storage or market, (c) used by farmers or ranchers in exchange
21 of service in such hauling of such supplies or agricultural
22 products, livestock, and produce, or (d) used occasionally to carry
23 camper units, to pull boats or cabin trailers, or to carry or pull
24 museum pieces or vehicles of historical significance, without
25 compensation, to events for public display or educational purposes.
26 Such trucks may carry on their license plates, in addition to the
27 registration number, the designation farm and the words NOT FOR
1 HIRE;

2 (11) Fertilizer trailer means any trailer, including
3 gooseneck applicators or trailers, designed and used exclusively to
4 carry or apply agricultural fertilizer or agricultural chemicals
5 and having a gross weight, including load thereon, of twenty
6 thousand pounds or less. Such trailers shall carry on their
7 license plate, in addition to the registration number, the letter
8 X;

9 (12) Film vehicle means any motor vehicle or trailer used
10 exclusively by a nonresident production company temporarily on
11 location in Nebraska producing a feature film, television
12 commercial, documentary, or industrial or educational videotape

13 production;

14 (13) Fleet means one or more apportionable vehicles;

15 (14) Highways means public streets, roads, turnpikes,
16 parks, parkways, drives, alleys, and other public ways used for the
17 passage of road vehicles;

18 (15) Injurisdiction distance means total miles or
19 kilometers operated (a) in the State of Nebraska during the
20 preceding year by the motor vehicle or vehicles registered and
21 licensed for fleet operation and (b) in noncontracting reciprocity
22 jurisdictions by fleet vehicles that are base-plated in Nebraska;

23 (16) Local truck means a truck and combinations of
24 trucks, truck-tractors, or trailers or semitrailers operated solely
25 within an incorporated city or village or within ten miles of the
26 corporate limits of the city or village in which they are owned,
27 operated, and registered. Such trucks shall carry on their license
1 plates, in addition to the registration number, the designation of
2 local truck;

3 (17) Motor vehicle means any vehicle propelled by any
4 power other than muscular power except (a) mopeds as defined in
5 section 60-637, (b) farm tractors, (c) self-propelled equipment
6 designed and used exclusively to carry and apply fertilizer,
7 chemicals, or related products to agricultural soil and crops,
8 agricultural floater-spreader implements as defined in section
9 60-6,294.01, and other implements of husbandry designed for and
10 used primarily for tilling the soil and harvesting crops or feeding
11 livestock, (d) power unit hay grinders or a combination which
12 includes a power unit and a hay grinder when operated without
13 cargo, (e) vehicles which run only on rails or tracks, (f) off-road
14 designed vehicles, including, but not limited to, golf carts,
15 go-carts, riding lawnmowers, garden tractors, all-terrain vehicles
16 as defined in section 60-6,355, snowmobiles ~~as defined in section~~
17 ~~60-663 registered or exempt from registration under sections~~
18 ~~60-6,320 to 60-6,346~~, and minibikes as defined in section 60-636,
19 (g) road and general-purpose construction and maintenance machinery
20 not designed or used primarily for the transportation of persons or
21 property, including, but not limited to, ditchdigging apparatus,
22 asphalt spreaders, bucket loaders, leveling graders, earthmoving
23 carryalls, power shovels, earthmoving equipment, and crawler
24 tractors, (h) self-propelled chairs used by persons who are
25 disabled, and (i) electric personal assistive mobility devices as
26 defined in section 60-618.02;

27 (18) Motorcycle means any motor vehicle, except a
1 tractor, an all-terrain vehicle as defined in section 60-6,355, or
2 an electric personal assistive mobility device as defined in
3 section 60-618.02, having a seat or saddle for use of the rider and
4 designed to travel on not more than three wheels in contact with
5 the ground;

6 (19) Noncontracting reciprocity jurisdiction means any
7 jurisdiction which is not a party to any type of contracting

8 agreement between the State of Nebraska and one or more other
 9 jurisdictions for registration purposes on commercial vehicles and,
 10 as a condition to operate on the highways of that jurisdiction, (a)
 11 does not require any type of vehicle registration or allocation of
 12 vehicles for registration purposes or (b) does not impose any
 13 charges based on miles operated, other than those that might be
 14 assessed against fuel consumed in that jurisdiction, on any
 15 vehicles which are part of a Nebraska-based fleet;
 16 (20) Owner means a person, firm, or corporation which
 17 holds a legal title of a vehicle. If (a) a vehicle is the subject
 18 of an agreement for the conditional sale thereof with the right of
 19 purchase upon performance of the conditions stated in the agreement
 20 and with an immediate right of possession vested in the conditional
 21 vendee, (b) a vehicle is subject to a lease of thirty days or more
 22 with an immediate right of possession vested in the lessee, or (c)
 23 a mortgagor of a vehicle is entitled to possession, then such
 24 conditional vendee, lessee, or mortgagor shall be deemed the owner
 25 for purposes of Chapter 60, article 3. For such purpose, there are
 26 hereby adopted and incorporated by reference the provisions of
 27 Article XI, International Registration Plan, adopted by the
 1 American Association of Motor Vehicle Administrators, as revised
 2 October 1, 2001;
 3 (21) Park means to stop a vehicle for any length of time,
 4 whether occupied or unoccupied;
 5 (22) Passenger car means a motor vehicle designed and
 6 used to carry ten passengers or less and not used for hire;
 7 (23) Proof of financial responsibility has the same
 8 meaning as in section 60-501;
 9 (24) Self-propelled mobile home means a vehicle with
 10 motive power designed for living quarters;
 11 (25) Semitrailer means any vehicle without motive power
 12 designed for carrying persons or property and for being drawn by a
 13 motor vehicle and so constructed that some part of its weight and
 14 that of its load rests upon or is carried by the towing vehicle;
 15 (26) Suspension of operator's license has the same
 16 meaning as in section 60-476.02;
 17 (27) Total fleet distance means the total distance
 18 operated in all jurisdictions during the preceding year by the
 19 vehicles in such fleet during such year;
 20 (28) Trailer means any vehicle without motive power
 21 designed for carrying persons or property and being pulled by a
 22 motor vehicle and so constructed that no part of its weight rests
 23 upon the towing vehicle;
 24 (29) Transporter means any person lawfully engaged in the
 25 business of transporting vehicles not his or her own solely for
 26 delivery thereof (a) by driving singly, (b) by driving in
 27 combinations by the towbar, fullmount, or saddlemount methods or
 1 any combinations thereof, or (c) when a truck or tractor draws a
 2 semitrailer or tows a trailer;

3 (30) Truck means a motor vehicle that is designed, used,
4 or maintained primarily for the transportation of property;

5 (31) Truck-tractor means any motor vehicle designed and
6 used primarily for drawing other vehicles and not so constructed as
7 to carry a load other than a part of the weight of the vehicle and
8 load being drawn;

9 (32) Utility trailer means a trailer having a gross
10 weight, including load thereon, of nine thousand pounds or less
11 attached to a motor vehicle, ~~and used exclusively to carry~~
12 ~~miscellaneous items of personal property~~. Such trailers shall
13 carry on their license plate, in addition to the registration
14 number, the letter X; and

15 (33) Vehicle means any device in, upon, or by which any
16 person or property is or may be transported or drawn upon a public
17 highway except devices moved solely by human power or used
18 exclusively upon stationary rails or tracks.

19 Sec. 41. Section 60-364, Revised Statutes Supplement,
20 2003, is amended to read:

21 60-364. (1) The Director of Motor Vehicles may revoke,
22 suspend, cancel, or refuse to issue or renew a registration
23 certificate under sections 60-356 to 60-361 upon receipt of notice
24 under the federal Performance and Registration Information Systems
25 Management Program that the ability of the applicant or certificate
26 holder to operate has been terminated or denied by a federal
27 agency.

1 (2) Any person who receives notice from the director of
2 action taken pursuant to subsection (1) of this section shall
3 immediately return such registration certificate and license plates
4 to the Department of Motor Vehicles. If any person fails to return
5 the certificate and plates to the department, the department shall
6 forthwith direct a carrier enforcement officer or other officer of
7 the Nebraska State Patrol to secure possession thereof and to
8 return the same to the department. The officer shall make every
9 reasonable effort to secure the certificate and plates and return
10 them to the department.

11 Sec. 42. Section 60-462.01, Revised Statutes Supplement,
12 2002, is amended to read:

13 60-462.01. For purposes of the Motor Vehicle Operator's
14 License Act, the parts, subparts, and sections of the federal Motor
15 Carrier Safety Regulations, 49 C.F.R., as referenced in the act and
16 as they existed on January 1, ~~2003~~ 2004, are adopted as Nebraska
17 law.

18 Sec. 44. Section 60-484.02, Revised Statutes Supplement,
19 2002, is amended to read:

20 60-484.02. (1) Each applicant for an operator's license
21 or state identification card shall have his or her photograph taken
22 or, beginning on the implementation date designated pursuant to
23 section 60-484.01, have his or her digital image taken. Digital
24 images shall be preserved for use as prescribed in sections

25 60-4,119, 60-4,151, and 60-4,180. The images shall be used for
 26 issuing operators' licenses and state identification cards. The
 27 images may be retrieved only by the Department of Motor Vehicles
 1 for issuing renewal, duplicate, and replacement operators' licenses
 2 and state identification cards and may not be otherwise released
 3 except in accordance with subsection (3) of this section.

4 (2) Upon application for an operator's license or state
 5 identification card, each applicant shall provide his or her
 6 signature in a form prescribed by the department. Beginning on the
 7 implementation date designated pursuant to section 60-484.01,
 8 digital signatures shall be preserved for use on original, renewal,
 9 duplicate, and replacement operators' licenses and state
 10 identification cards and may not be otherwise released except in
 11 accordance with subsection (3) of this section.

12 (3) No officer, employee, agent, or contractor of the
 13 department or a law enforcement officer shall release a digital
 14 image or a digital signature except to a federal, state, or local
 15 law enforcement agency or a driver licensing agency of another
 16 state for the purpose of carrying out the functions of the agency
 17 or assisting another agency in carrying out its functions upon the
 18 verification of the identity of the person requesting the release
 19 of the information and the verification of the purpose of the
 20 requester in requesting the release. Any officer, employee, agent,
 21 or contractor of the department or law enforcement officer that
 22 knowingly discloses or knowingly permits disclosure of a digital
 23 image or digital signature in violation of this section shall be
 24 guilty of a Class IV felony and shall be subject to removal from
 25 office or discharge in the discretion of the Governor or agency
 26 head, as appropriate.

27 Sec. 47. Section 60-1901, Revised Statutes Supplement,
 1 2002, is amended to read:

2 60-1901. (1) A motor vehicle is an abandoned vehicle:

3 (a) If left unattended, with no license plates or valid
 4 In Transit decals issued pursuant to section 60-320 affixed
 5 thereto, for more than six hours on any public property;

6 (b) If left unattended for more than twenty-four hours on
 7 any public property, except a portion thereof on which parking is
 8 legally permitted;

9 (c) If left unattended for more than forty-eight hours,
 10 after the parking of such vehicle has become illegal, if left on a
 11 portion of any public property on which parking is legally
 12 permitted;

13 (d) If left unattended for more than seven days on
 14 private property if left initially without permission of the owner,
 15 or after permission of the owner is terminated; or

16 (e) If left for more than thirty days in the custody of a
 17 law enforcement agency after the agency has sent a letter to the
 18 last-registered owner under section 60-1903.01.

19 (2) An all-terrain vehicle or minibike is an abandoned

20 vehicle:

21 (a) If left unattended for more than twenty-four hours on
22 any public property, except a portion thereof on which parking is
23 legally permitted;

24 (b) If left unattended for more than forty-eight hours,
25 after the parking of such vehicle has become illegal, if left on a
26 portion of any public property on which parking is legally
27 permitted;

1 (c) If left unattended for more than seven days on
2 private property if left initially without permission of the owner,
3 or after permission of the owner is terminated; or

4 (d) If left for more than thirty days in the custody of a
5 law enforcement agency after the agency has sent a letter to the
6 last-registered owner under section 60-1903.01.

7 (3) For purposes of this section:

8 (a) Public property means any public right-of-way,
9 street, highway, alley, or park or other state, county, or
10 municipally owned property; and

11 (b) Private property means any privately owned property
12 which is not included within the definition of public property.

13 ~~(3)~~ (4) No motor vehicle subject to forfeiture under
14 section 28-431 shall be an abandoned vehicle under this section.

15 Sec. 49. Sections 1 to 27, 29 to 48, and 51 of this act
16 become operative three calendar months after the adjournment of
17 this legislative session. The other sections of this act become
18 operative on their effective date.

19 Sec. 51. Original sections 37-1201, 60-6,324, 60-1805,
20 and 81-8,219, Reissue Revised Statutes of Nebraska, sections
21 13-910, 30-24,125, 37-1291, 60-108, 60-110, 60-111.01, 60-302.05,
22 60-308, 60-311.01, 60-484.02, and 60-1901, Revised Statutes
23 Supplement, 2002, and sections 60-106, 60-139, 60-301, 60-311.02,
24 60-364, 60-462.01, and 60-483, Revised Statutes Supplement, 2003,
25 are repealed."

26 2. Renumber the remaining sections and correct internal
27 references accordingly.

The Baker amendment was adopted with 29 ayes, 0 nays, 14 present and not voting, and 6 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 560A. E & R amendment, AM7157, found on page 374, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 644. Senator Hartnett renewed his pending amendment, AM2258, found on page 356.

The Hartnett amendment was adopted with 26 ayes, 0 nays, 17 present and not voting, and 6 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 644A. Advanced to E & R for engrossment.

LEGISLATIVE BILL 155. E & R amendment, AM7158, found on page 376, was adopted.

Senator Quandahl requested to pass over LB 155.

SENATOR CUDABACK PRESIDING

LEGISLATIVE BILL 279. E & R amendment, AM7162, printed separately and referred to on page 390, was adopted.

Senator Wehrbein renewed his pending amendment, AM2353, found on page 462.

Senator Jones renewed the Jones-Wehrbein pending amendment, AM2417, found on page 503, to the Wehrbein pending amendment.

The Jones-Wehrbein amendment was adopted with 26 ayes, 0 nays, 16 present and not voting, and 7 excused and not voting.

The Wehrbein amendment, as amended, was adopted with 30 ayes, 1 nay, 11 present and not voting, and 7 excused and not voting.

Senator Wehrbein renewed his pending amendment, AM2354, found on page 464.

Pending.

STANDING COMMITTEE REPORTS **Judiciary**

LEGISLATIVE BILL 874. Placed on General File.

LEGISLATIVE BILL 1059. Placed on General File.

LEGISLATIVE BILL 1028. Placed on General File as amended.
Standing Committee amendment to LB 1028:
AM2406

- 1 1. Strike the original section and insert the following
- 2 new sections:
- 3 "Section 1. Section 43-3342.04, Revised Statutes
- 4 Supplement, 2002, is amended to read:
- 5 43-3342.04. (1) The Title IV-D Division shall establish
- 6 a Customer Service Unit. In hiring the initial staff for the unit,

- 7 a hiring preference shall be given to employees of the clerks of
8 the district court. The duties of the Customer Service Unit
9 include, but are not limited to:
- 10 (a) Providing account information as well as addressing
11 inquiries made by customers of the State Disbursement Unit; and
12 (b) Administering two statewide toll-free telephone
13 systems, one for use by employers and one for use by all other
14 customers, to provide responses to inquiries regarding income
15 withholding, the collection and disbursement of support order
16 payments made to the State Disbursement Unit, and other child
17 support enforcement issues, including establishing a call center
18 with sufficient telephone lines, a voice response unit, and
19 adequate personnel available during normal business hours to ensure
20 that responses to inquiries are made by the division's personnel or
21 the division's designee.
- 22 (2) The physical location of the Customer Service Unit
23 shall be in Nebraska and shall result in the hiring of a number of
24 new employees or contractor's staff equal to at least one-fourth of
1 one percent of the labor force in the county or counties in which
2 the Customer Service Unit is located. Customer service staff
3 responsible for providing account information related to the State
4 Disbursement Unit may be located at the same location as the State
5 Disbursement Unit.
- 6 (3) The Director of Health and Human Services shall issue
7 a report to the Governor and to the Legislature on or before
8 January 31 of each year which discloses information relating to the
9 operation of the Title IV-D Division, the State Disbursement Unit,
10 and the Customer Service Unit for the preceding calendar year
11 including, but not limited to:
- 12 (a) The number of ~~transactions~~ cases processed by the
13 State Disbursement Unit;
14 (b) The dollar amount collected by the State Disbursement
15 Unit;
16 (c) The dollar amount disbursed by the State Disbursement
17 Unit;
18 (d) The percentage of identifiable collections disbursed
19 within two business days;
20 (e) The percentage of identifiable collections that are
21 matched to the correct case;
22 (f) The number and dollar amount of insufficient funds
23 checks received by the State Disbursement Unit;
24 (g) The number and dollar amount of insufficient funds
25 checks received by the State Disbursement Unit for which
26 restitution is subsequently made to the State Disbursement Unit;
27 (h) The number of cases open at the end of the fiscal
1 year with support orders established;
2 (i) The number of cases for which paternity was
3 established;
4 (j) The total dollar amount of support due;

5 (k) The total arrearages due and the number of cases
6 paying toward arrearages;
7 (l) The number of incoming telephone calls processed
8 through the Customer Service Unit;
9 (+) (m) The average length of incoming calls from
10 employers;
11 (+) (n) The average length of incoming calls from all
12 other customers;
13 (+) (o) The percentage of incoming calls resulting in
14 abandonment by the customer;
15 (+) (p) The percentage of incoming calls resulting in a
16 customer receiving a busy signal;
17 (+) (q) The average holding time for all incoming calls;
18 and
19 (+) (r) The percentage of calls handled by employees of
20 the Customer Service Unit that are resolved within twenty-four
21 hours; and
22 (s) A narrative highlighting the strengths and weaknesses
23 of the Title IV-D Division, progress, or lack thereof, in
24 collections and disbursement of support payments, and
25 recommendations for improvements.
26 Sec. 2. Original section 43-3342.04, Revised Statutes
27 Supplement, 2002, is repealed.".

(Signed) Kermit A. Brashear, Chairperson

Natural Resources

LEGISLATIVE BILL 830. Placed on General File.

LEGISLATIVE BILL 1163. Placed on General File as amended.
Standing Committee amendment to LB 1163:
AM2481

- 1 1. On page 2, line 15, after "professional" insert "professional engineer licensed in Nebraska,"; and in lines 17 and
- 2 20 after "professional" insert "professional engineer,".
- 3 2. On page 3, line 26, strike "certification" and insert
- 4 "inspection"; and in line 28 strike "certification and
- 5 "registration".
- 6 3. On page 4, line 3, strike "certification" and insert
- 7 "onsite wastewater treatment system inspection".

LEGISLATIVE BILL 1173. Placed on General File as amended.
Standing Committee amendment to LB 1173:
AM2483

- 1 1. On page 2, line 14, strike "five" and insert "three".
- 2 2. On page 3, line 6, after "intent" insert ", except
- 3 that (a) any person who, at least six months prior to the filing of
- 4 a notice of intent, obtained a valid permit from a natural

5 resources district to drill or construct a water well within the
 6 area subject to the protection provided by this section is not
 7 prohibited from drilling or constructing such well and (b) the
 8 public water supplier may waive the protection provided by this
 9 section and allow a person to drill or construct a new or
 10 replacement water well within one thousand feet of the boundaries
 11 of such land, unless the replacement water well is drilled in
 12 accordance with section 46-609.

13 (6) Within thirty days after the public water supplier
 14 reaches a determination that the land described in a particular
 15 notice of intent is not suitable for a public water supply
 16 wellfield, the public water supplier shall notify the Department of
 17 Natural Resources, the owner of the land described in the notice of
 18 intent, and the owners of the contiguous tracts of land of such
 19 determination. Upon receipt by the department of the notice of
 20 such determination, the notice of intent that contains the
 21 description of such tract of land shall terminate immediately,
 22 notwithstanding any other provision of this section".

LEGISLATIVE BILL 1146. Placed on General File as amended.
 Standing Committee amendment to LB 1146:
 AM2499

- 1 1. On page 2, line 19; page 4, line 3; page 5, line 10;
- 2 page 7, lines 4 and 13; and page 10, line 27, strike "2013" and
- 3 insert "2008".

(Signed) Ed Schrock, Chairperson

AMENDMENTS - Print in Journal

Senator Johnson filed the following amendment to LB 139:
 AM2414

(Amendments to E & R amendments, AM7165)

- 1 1. Insert the following new sections:
- 2 "Section 1. Section 29-2262, Revised Statutes
- 3 Supplement, 2003, is amended to read:
- 4 29-2262. (1) When a court sentences an offender to
- 5 probation, it shall attach such reasonable conditions as it deems
- 6 necessary or likely to insure that the offender will lead a
- 7 law-abiding life. No offender shall be sentenced to probation if
- 8 he or she is deemed to be a habitual criminal pursuant to section
- 9 29-2221.
- 10 (2) The court may, as a condition of a sentence of
- 11 probation, require the offender:
- 12 (a) To refrain from unlawful conduct;
- 13 (b) To be confined periodically in the county jail or to
- 14 return to custody after specified hours but not to exceed (i) for
- 15 misdemeanors, the lesser of ninety days or the maximum jail term
- 16 provided by law for the offense and (ii) for felonies, one hundred

- 17 eighty days;
- 18 (c) To meet his or her family responsibilities;
- 19 (d) To devote himself or herself to a specific employment
- 20 or occupation;
- 21 (e) To undergo medical or psychiatric treatment and to
- 22 enter and remain in a specified institution for such purpose;
- 23 (f) To pursue a prescribed secular course of study or
- 1 vocational training;
- 2 (g) To attend or reside in a facility established for the
- 3 instruction, recreation, or residence of persons on probation;
- 4 (h) To refrain from frequenting unlawful or disreputable
- 5 places or consorting with disreputable persons;
- 6 (i) To possess no firearm or other dangerous weapon if
- 7 convicted of a felony, or if convicted of any other offense, to
- 8 possess no firearm or other dangerous weapon unless granted written
- 9 permission by the court;
- 10 (j) To remain within the jurisdiction of the court and to
- 11 notify the court or the probation officer of any change in his or
- 12 her address or his or her employment and to agree to waive
- 13 extradition if found in another jurisdiction;
- 14 (k) To report as directed to the court or a probation
- 15 officer and to permit the officer to visit his or her home;
- 16 (l) To pay a fine in one or more payments as ordered;
- 17 (m) To pay for tests to determine the presence of drugs
- 18 or alcohol, psychological evaluations, offender assessment screens,
- 19 and rehabilitative services required in the identification,
- 20 evaluation, and treatment of offenders if such offender has the
- 21 financial ability to pay for such services;
- 22 (n) To perform community service as outlined in sections
- 23 29-2277 to 29-2279 under the direction of his or her probation
- 24 officer;
- 25 (o) To be monitored by an electronic surveillance device
- 26 or system and to pay the cost of such device or system if the
- 27 offender has the financial ability;
- 1 (p) To participate in a community correctional facility
- 2 or program as provided in the Community Corrections Act;
- 3 (q) To successfully complete an incarceration work camp
- 4 program as determined by the Department of Correctional Services;
- 5 (r) To satisfy any other conditions reasonably related to
- 6 the rehabilitation of the offender;
- 7 (s) To make restitution as described in sections 29-2280
- 8 and 29-2281; or
- 9 (t) To pay for all costs imposed by the court, including
- 10 court costs and the fees imposed pursuant to section 29-2262.06.
- 11 (3) In all cases in which the offender is guilty of
- 12 violating section 28-416, a condition of probation shall be
- 13 mandatory treatment and counseling as provided by such section.
- 14 (4) In all cases in which the offender is guilty of a
- 15 crime covered by the DNA Detection of Sexual and Violent Offenders

16 Act, a condition of probation shall be the taking of a DNA sample
17 pursuant to the act prior to release on probation.

18 Sec. 2. Section 29-4102, Revised Statutes Supplement,
19 2002, is amended to read:

20 29-4102. The Legislature finds that DNA data banks are
21 an important tool in criminal investigations, in the exclusion of
22 individuals who are the subject of criminal investigations or
23 prosecutions, ~~and~~ in deterring and detecting recidivist acts, and
24 in locating and identifying missing persons and human remains.
25 Several states have enacted laws requiring persons convicted of
26 certain crimes, especially sex offenses, to provide genetic samples
27 for DNA typing tests. Moreover, it is the policy of this state to
1 assist federal, state, and local criminal justice and law
2 enforcement agencies in the identification and detection of
3 individuals in criminal investigations and in locating and
4 identifying missing persons and human remains. It is in the best
5 interest of this state to establish a State DNA Data Base for DNA
6 records and a State DNA Sample Bank as a repository for DNA samples
7 from individuals convicted of felony sex offenses and other
8 specified offenses and from individuals for purposes of assisting
9 in locating and identifying missing persons and human remains.

10 Sec. 7. Section 29-4107, Revised Statutes Supplement,
11 2002, is amended to read:

12 29-4107. (1) Only individuals (a) who are physicians or
13 registered nurses, (b) who are trained to withdraw human blood for
14 scientific or medical purposes and are obtaining blood specimens
15 while working under orders of or protocols and procedures approved
16 by a physician, registered nurse, or other independent health care
17 practitioner licensed to practice by the state if the scope of
18 practice of that practitioner permits the practitioner to obtain
19 blood specimens, or (c) who are both employed by a licensed
20 institution or facility and have been trained to withdraw human
21 blood for scientific or medical purposes shall ~~draw~~ withdraw blood
22 for a DNA sample under the DNA Detection of Sexual and Violent
23 Offenders Act.

24 (2) In addition to the DNA sample, one thumb print or
25 fingerprint shall be taken from the person from whom the DNA sample
26 is being ~~drawn~~ taken for the exclusive purpose of verifying the
27 identity of such person. The DNA sample and the thumb print or
1 fingerprint shall be delivered to the Nebraska State Patrol within
2 five working days after ~~drawing~~ taking the sample.

3 (2) (3) A person authorized to ~~draw~~ take DNA samples
4 under ~~this section~~ the act is not criminally liable for ~~drawing~~
5 taking a DNA sample and transmitting DNA records pursuant to the
6 act if he or she performs these activities in good faith and is not
7 civilly liable for such activities if he or she performed such
8 activities in a reasonable manner according to generally accepted
9 medical and other professional practices."

10 2. On page 1, line 19, strike "with respect to offenses"

- 11 and show as stricken.
- 12 3. On page 3, line 11, strike "nonsworn," and strike
- 13 "officer" and insert "member"; and in line 13 strike "testing
- 14 procedures" and insert "typing tests".
- 15 4. On page 5, line 2, strike "The", show as stricken,
- 16 and insert "Any such contract shall require that the"; and in line
- 17 3 strike "would".
- 18 5. On page 6, lines 16 and 17; and page 7, lines 7 and
- 19 8, strike "has not already had a DNA sample taken pursuant to this
- 20 section" and insert "does not have a DNA sample available for use
- 21 in the State DNA Sample Bank".
- 22 6. On page 7, line 8, strike "still", show as stricken,
- 23 and insert "awaiting sentencing or".
- 24 7. On page 8, line 21, strike "29-4103 to 29-4106 and"
- 25 and insert "29-4102 to"; and in line 22 after the last comma insert
- 26 "and section 29-2262, Revised Statutes Supplement, 2003,".
- 27 8. Renumber the remaining sections accordingly.

Senator Beutler filed the following amendment to LB 227:
AM2503

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 "Section 1. Section 60-6,265, Reissue Revised Statutes
- 4 of Nebraska, is amended to read:
- 5 60-6,265. For purposes of sections 60-6,266 to 60-6,273,
- 6 occupant protection system ~~shall mean~~ means a system utilizing a
- 7 lap belt, a shoulder belt, or any combination of belts installed in
- 8 a motor vehicle which (1) restrains drivers and passengers and (2)
- 9 conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R.
- 10 571.207, 571.208, 571.209, and 571.210, as such standards existed
- 11 on January 1, 2004, or to the federal motor vehicle safety
- 12 standards for passenger restraint systems applicable for the motor
- 13 vehicle's model year.
- 14 Sec. 2. Section 60-6,267, Revised Statutes Supplement,
- 15 2002, is amended to read:
- 16 60-6,267. (1) Any person in Nebraska who drives any
- 17 motor vehicle which has or is required to have an occupant
- 18 protection system shall ensure that:
- 19 (a) All children up to six years of age being transported
- 20 ~~in by~~ such vehicle use a child passenger restraint system of a type
- 21 which meets Federal Motor Vehicle Safety Standard 213 as developed
- 22 by the National Highway Traffic Safety Administration, as such
- 23 standard existed on ~~July 20, 2002~~ January 1, 2004, and which is
- 24 correctly installed in such vehicle; and
- 1 (b) All children six years of age and less than ~~sixteen~~
- 2 eighteen years of age being transported ~~in by~~ such vehicle use an
- 3 occupant protection system.
- 4 This subsection shall apply to every motor vehicle which
- 5 is equipped with an occupant protection system or is required to be

6 equipped with restraint systems pursuant to Federal Motor Vehicle
7 Safety Standard 208, as such standard existed on ~~July 20, 2002~~
8 January 1, 2004, except taxicabs, mopeds, motorcycles, and any
9 motor vehicle designated by the manufacturer as a 1963 year model
10 or earlier which is not equipped with an occupant protection
11 system.

12 (2) Whenever any licensed physician determines, through
13 accepted medical procedures, that use of a child passenger
14 restraint system by a particular child would be harmful by reason
15 of the child's weight, physical condition, or other medical reason,
16 the provisions of subsection (1) of this section shall be waived.
17 The driver of any vehicle transporting such a child shall carry on
18 his or her person or in the vehicle a signed written statement of
19 the physician identifying the child and stating the grounds for
20 such waiver.

21 (3) The drivers of authorized emergency vehicles shall
22 not be subject to the requirements of subsection (1) of this
23 section when operating such authorized emergency vehicles pursuant
24 to their employment.

25 (4) A driver of a motor vehicle shall not be subject to
26 the requirements of subsection (1) of this section if the motor
27 vehicle is being operated in a parade or exhibition and the parade
1 or exhibition is being conducted in accordance with applicable
2 state law and local ordinances and resolutions.

3 (5) The Department of Motor Vehicles shall develop and
4 implement an ongoing statewide public information and education
5 program regarding the use of child passenger restraint systems and
6 occupant protection systems and the availability of distribution
7 and discount programs for child passenger restraint systems.

8 ~~(5)~~ (6) All persons being transported ~~in~~ by a motor
9 vehicle operated by a holder of a provisional operator's permit or
10 a school permit shall use such motor vehicle's occupant protection
11 system.

12 Sec. 3. Section 60-6,268, Revised Statutes Supplement,
13 2002, is amended to read:

14 60-6,268. (1) A person violating any provision of
15 subsection (1) of section 60-6,267 shall be guilty of an infraction
16 as defined in section 29-431 and shall be fined twenty-five dollars
17 for each violation. The failure to provide a child restraint
18 system for more than one child in the same vehicle at the same
19 time, as required in such subsection, shall not be treated as a
20 separate offense.

21 (2) Enforcement of subdivision (1)(b) and subsection ~~(5)~~
22 (6) of section 60-6,267 shall be accomplished only as a secondary
23 action when an operator of a motor vehicle has been cited or
24 charged with a violation or some other offense unless the violation
25 involves a person under the age of eighteen years riding in or on
26 any portion of the vehicle not designed or intended for the use of
27 passengers when the vehicle is in motion.

- 1 Sec. 4. Original section 60-6,265, Reissue Revised
- 2 Statutes of Nebraska, and sections 60-6,267 and 60-6,268, Revised
- 3 Statutes Supplement, 2002, are repealed."

Senator Hartnett filed the following amendment to LB 227:

FA1454

On page 5 delete lines 8-10.

RESOLUTION

LEGISLATIVE RESOLUTION 233. Introduced by Thompson, 14; Jensen, 20.

PURPOSE: The purpose of this study is to examine the utilization of buildings owned by the State of Nebraska. This study shall review the status of all state buildings, specifically those that are currently unoccupied, and shall review the future plans for all unoccupied state buildings. Information on the potential sale price or demolition costs of these unoccupied state buildings shall be included in this study.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Building Maintenance Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

ATTORNEY GENERAL'S OPINION

Opinion # 04005

DATE: February 6, 2004

SUBJECT: Whether Application of Amendment to Definition of "New Ethanol Facility" to Existing Ethanol Production Agreements Unconstitutionally Impairs Contractual Obligations.

REQUESTED BY: Senator Chris Beutler
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the constitutionality of LB 479,

as amended by AM0852. LB 479, as amended, includes several changes to the Nebraska Ethanol Development Act, Neb. Rev. Stat. §§ 66-1330 to 66-1348 (1996 and Cum. Supp. 2002) [the "Act"]. The Act provides for certain tax credits for ethanol produced at a qualifying ethanol production facility. Neb. Rev. Stat. § 66-1344 (Cum. Supp. 2002). Subsection (4)(a) of § 66-1344 provides that "[b]eginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced . . ." for specified periods. Neb. Rev. Stat. § 66-1444(4)(a).¹ "[N]ew ethanol facility" is defined to "mean[] an ethanol facility which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999." Neb. Rev. Stat. § 66-1344(4)(b) (Cum. Supp. 2002). In order to receive the credits provided in subsection (4) of § 66-1344, producers must enter into written agreements with the Tax Commissioner. Neb. Rev. Stat. § 66-1344.01 (Cum. Supp. 2002).

LB 479, as amended by AM0852, proposes to amend the definition of "new ethanol facility" as follows:

[N]ew ethanol facility means a facility for the conversion of grain or other raw feedstock into ethanol and other byproducts of ethanol production which (i) is not in production on or before September 1, 2002, or (ii) has not received credits prior to June 1, 1999. A new ethanol facility does not mean an expansion of an existing ethanol plant that does not result in the physical construction of an entire ethanol processing facility or which shares or uses in a significant manner any existing plant's systems and does not include the expansion of production capacity after June 30, 2004, of a plant qualifying for credits under this subsection. This definition applies to contracts entered into before, on, or after the effective date of this act. (Emphasis added).

It is our understanding that a number of ethanol producers have entered into agreements with the Tax Commissioner pursuant to § 66-1344.01 under which production of the 100,000 gallon minimum annual rate required by § 66-1344(4)(a) to qualify for credits will occur at a new ethanol facility prior to June 30, 2004, followed by expansion of the facility to a capacity of several million gallons.² LB 479, as amended, would prohibit the receipt of credits for expansion of such facilities. As the amendment expressly provides that "[t]his definition applies to contracts entered into before . . ." the bill's effective date, you have asked us to address whether application of the amended definition of "new ethanol facility" to existing ethanol production agreements unconstitutionally impairs contractual obligations under these agreements.

I. Does LB 479, as Amended, Change Existing Law?

Initially, prior to addressing any question regarding impairment of

contracts, it is necessary to determine if the amended definition of "new ethanol facility" effects a change in the statutory definition of this term in § 66-1344(4)(b). It has been suggested that the amendment merely interprets or clarifies the Legislature's intent in defining "new ethanol facility" in a manner consistent with LB 536, and that retroactive application of the amended definition thus does not impermissibly impair any vested rights or contracts entered into between producers and the State. In this regard, it has been recognized that "[t]he mere fact that a statute has a retrospective application does not necessarily render it unconstitutional. For instance, a statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if it is applied to transactions predating its enactment." 16B Am. Jur. 2d Constitutional Law § 690 (1998) (footnotes omitted). Thus, it is first necessary to examine whether the amended definition of "new ethanol facility" effects a change in the law under which existing agreements were entered.

Subsection (4)(a) of § 66-1344 provides that "[b]eginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced . . ." for specified periods. Neb. Rev. Stat. § 66-1444(4)(a). "[N]ew ethanol facility" is defined to "mean[] an ethanol facility which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999." Neb. Rev. Stat. § 66-1344(4)(b) (Cum. Supp. 2002). Thus, the only current statutory requirements to qualify a "new ethanol facility" for credits are that the facility must be in production at a "minimum rate of one hundred thousand gallons of ethanol annually . . . on or before June 30, 2004 . . .," and that the facility either (1) was "not in production on or before September 1, 2001 . . .," or (2) had "not received credits prior to June 1, 1999." Neb. Rev. Stat. §§ 66-1344(a) and (b) (Cum. Supp. 2002).

In addition to the qualifications to receive ethanol credits under subsection (4) of § 66-1344, Neb. Rev. Stat. § 66-1344.01 requires that producers enter into agreements with the Tax Commissioner to receive credits. Section 66-1344.01 provides:

The Tax Commissioner and the producer eligible to receive credits under subsection (4) of section 66-1344 shall enter into a written agreement. The producer shall agree to produce ethanol at the designated facility and any expansion thereof. The Tax Commissioner, on behalf of the State of Nebraska, shall agree to furnish the producer the tax credits as provided by and limited in section 66-1344 in effect on the date of the agreement. The agreement to produce ethanol in return for the credits shall be sufficient consideration, and the agreement shall be binding upon the state. No credit shall be given to any producer of ethanol which fails to produce ethanol in Nebraska in compliance with the agreement. The agreement shall include:

- (1) The name of the producer;
- (2) The address of the ethanol facility;
- (3) The date of the initial eligibility of the ethanol facility to receive such credits;
- (4) The name plate design capacity of the ethanol facility as of the date of its initial eligibility to receive such credits; and
- (5) The name plate design capacity which the facility is intended to have after the completion of any proposed expansion. If no expansion is contemplated at the time of the initial agreement, the agreement may be amended to include any proposed expansion.

Neb. Rev. Stat. § 66-1344.01 (Cum. Supp. 2002) (emphasis added).

"In reading a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense." *First Data Corp. v. Nebraska Dep't of Revenue*, 263 Neb. 344, 352, 639 N.W.2d 898, 903 (2002). "A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless." *Sydow v. City of Grand Island*, 263 Neb. 389, 397, 539 N.W.2d 913, 921 (2002). "[A] court will construe statutes relating to the same subject matter together so as to maintain a consistent, harmonious, and sensible scheme." *Premium Farms v. County of Holt*, 263 Neb. 415, 427, 640 N.W.2d 633, 642 (2002).

The plain language of §§ 66-1344(4) and 66-1344.01, construed together, evidences an intent to allow producers entering into agreements to qualify for credits for a "new ethanol facility" provided: (1) the producers have met the 100,000 gallon annual rate production threshold by June 30, 2004; and (2) the facility either was not in production on or before September 1, 2001, or had not received credits prior to June 1, 1999. The statutes do not appear to limit a producer to credits based on production capacity achieved on or before June 30, 2004, if the minimum production level is achieved. The language of § 66-1344.01 providing that the agreement encompasses production of ethanol "at the designated facility or any expansion thereof," and that an agreement may include reference to facility capacity "after the completion of any proposed expansion," appears to contemplate that producers are eligible to receive credits based on the expansion of a "new ethanol facility" pursuant to agreements entered into under existing statutes. Under this interpretation, retrospective application of the definition of "new ethanol facility" in LB 479, as amended, would effect a change in existing law altering the effect of a number of ethanol production agreements entered into between producers and the State.

Indeed, an examination of agreements entered into by producers and the

Tax Commissioner providing for production at the minimum rate on or before June 30, 2004, and including expansion of the facility's name plate design capacity thereafter, demonstrates an administrative construction consistent with an interpretation allowing credits for expansion of capacity at facilities timely meeting the statutory minimum production deadline. The courts accord deference to the interpretation and application of statutes by administrative agencies or officers charged with their administration and enforcement. *Metropolitan Utilities Dist. v. Balka*, 252 Neb. 172, 560 N.W.2d 795 (1997); *Vulcraft v. Karnes*, 229 Neb. 676, 428 N.W.2d 505 (1988); *McCaul v. American Savings Co.*, 213 Neb. 841, 331 N.W.2d 795 (1983). This administrative interpretation, while not controlling, further supports concluding that the amended definition of "new ethanol facility" alters the law under which existing ethanol production agreements were executed.

The history of LB 536 provides some indication the Legislature intended that the credits available for a "new ethanol facility" would be available only for a new facility completed on or before June 30, 2004, and that credits for "expansion" of a facility after that date were not contemplated. The Introducer's Statement of Intent accompanying LB 536 stated "[t]he bill amends section 66-1344 to establish a renewed ethanol production incentive for new ethanol plants modeled after previous production incentives that have expired . . . , and that "[n]ew subsection (4) provides that newly constructed ethanol facilities shall be eligible for a credits [sic] of 20 cents per gallon of ethanol produced." Committee Records on LB 536, 97th Leg., 1st Sess., 1 (Introducer's Statement of Intent) (Feb. 2, 2001).³ The bill's principal introducer testified that the June 30, 2004, deadline was intended to "narrow" the "window" for credit eligibility "so that revenue measures in the bill match the assumptions of new plant building foreseeable in the most immediate future." *Id.* at 17-18 (Statement of Sen. Dierks). A contrast was drawn between the proposed higher credit for new facilities, as opposed to the lower, 7 and ½ cents credit per gallon "for existing plant expansion." *Id.* at 18. The bill's introducer further testified that "LB 536 lower[ed] the minimum annual production to qualify from 2 million gallons to 100,000 gallons . . . , which was "intended to open the program to farm-scale ethanol production systems that can be built in conjunction with feeding operations." *Id.*

This history potentially bolsters interpreting the Act to provide credits for "new ethanol facilities" only to those constructed on or before June 30, 2004. This interpretation would be consistent with the stated intent to match the revenue measures intended to fund the credits with expectations regarding the number of new facilities which would qualify for the credits.⁴ Also, it appears the 100,000 gallon minimum threshold to qualify for credits was designed to allow small scale farm producers to qualify for credits, as opposed to permitting proposed new operators of large scale commercial ethanol facilities an opportunity to qualify for credits by producing the minimum amount on or before June 30, 2004, and expanding to greater capacity after that date. Under this interpretation, the amended definition of

"new ethanol facility" in LB 479 would not alter the law under which current agreements were executed.

There are two impediments to adopting this construction. First, while certain portions of the legislative history of LB 536 support this view, other aspects of the history seem to contradict this interpretation. For example, the bill's introducer described the new incentives as applying to "new facilities which begin production within the window established by the bill," and stated it was intended "that the new plants would need to be in production prior to June of 2004." Committee Records on LB 536, *supra*, at 17 (Statement of Sen. Dierks). These statements indicate that new facilities were required only to "begin production" or be "in production" at the minimum rate on or before June 30, 2004, in order to qualify for credits as a "new ethanol facility." Second, legislative history is only used to construe a statute which is "reasonably considered ambiguous." *Sydow v. City of Grand Island*, 263 Neb. at 397, 639 N.W.2d at 921. As noted previously, the plain language of §§ 66-1344(4) and 66-1344.01, construed together, appears to unambiguously demonstrate a legislative intent under existing law to require that, in order for a producer to qualify for credits as a "new ethanol facility," the minimum production level in § 66-1344(4)(a) must be met by June 30, 2004, and the facility either must not have been in production prior to September 1, 2001, or did not receive credits prior to June 1, 1999. Section 66-1344.01 provides that a producer entering into an agreement to receive credits at a "new ethanol facility" may agree to produce ethanol qualifying for credits "at the designated facility or any expansion thereof." Neb. Rev. Stat. § 66-1344.01 (Cum. Supp. 2002). Given this statutory language, it is difficult to assert that the definition of "new ethanol facility" in LB 479, as amended, does not change the definition of this term in the existing statutes under which various producers have entered into ethanol production agreements with the State, including credits based on expansion of qualifying facilities. Accordingly, the amended definition of "new ethanol facility" likely is not a mere legislative "clarification" or "interpretation" which does not alter the definition of this term under existing law.

II. Does LB 479, as Amended, Unconstitutionally Impair Vested Rights or Existing Contracts?

If the amended definition of "new ethanol facility" is not viewed as a mere "clarification" or "interpretation" of present statutes, it is then necessary to address your question as to whether application of this new definition operates to unconstitutionally impair the obligation of contracts entered into by ethanol producers and the State under current law.

Article I, § 10, of the United States Constitution, provides that "[n]o state . . . shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ." The Nebraska Constitution similarly provides that "[n]o law impairing the obligation of contracts . . . shall be passed." Neb. Const. art. I, § 16.

In analyzing claims that legislation unconstitutionally impairs contractual rights, the issue is whether state law has "operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). "This inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992). If the legislation involves a substantial impairment, "the State, in justification, must have a significant and legitimate public purpose behind the [law] . . . , such as remedying a broad or general social or economic" problem. *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411-12 (1983) (citation omitted). If a legitimate public purpose is established, it must be determined whether the law "[is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." *Id.* at 412 (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977)). While courts will generally defer to legislative judgments as to the necessity and reasonableness of acts affecting contractual relationships, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 505 (1987), such deference is not appropriate where the State's financial self-interest is at stake. *United States Trust Co. v. New Jersey*, 431 U.S. at 25-26.⁵

The initial Contract Clause inquiry concerns whether a contractual relationship exists between producers and the State by virtue of agreements with the Tax Commissioner executed pursuant to §§ 66-1344(4) and 66-1344.01. Section 66-1344.01 specifically provides that the producer's "agreement to produce ethanol in return for the credits shall be sufficient consideration, and the agreement shall be binding upon the state." *Neb. Rev. Stat. § 66-1344.01* (Cum. Supp. 2002). In reviewing the effect of this language, the following discussion from 16B Am. Jur. 2d Constitutional Law § 723 (1998) is instructive:

In determining whether a particular statute gives rise to a contractual obligation subject to constitutional impairment, it is of first importance to examine the language of the statute. Absent an adequate expression of actual intent to create a contract, that which is undoubtedly a scheme of public regulation will not lightly be construed to be, in addition, a private contract to which the state is a party. Although it may be taken as a general rule that rights conferred by statutes or ordinances are presumed not to be contractual in their nature so as to prevent their alteration or abrogation, this presumption can be overcome if language in the statute and other indicia show that the legislature intended to bind itself contractually. A legislative enactment in the ordinary form of a statute may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the state within the protection of the clause of the Federal Constitution forbidding the impairment of contractual obligations; rights may accrue under a statute, or even be conferred by it, of such character as to be regarded as contractual, and such rights cannot be

defeated by subsequent legislation or inadequate funding by the state.

Section 66-1344.01 expressly provides that agreements for credits under § 66-1344(4) are contracts between producers and the State. In prior opinions, we have recognized that agreements entered into under previous statutes allowing ethanol production credits based on agreements between producers and the State created contracts establishing vested rights. *Op. Att'y Gen. No. 95043* (May 25, 1995); *Op. Att'y Gen. No. 96031* (April 12, 1996). In each case, we concluded that the legislation in question was not intended to apply additional qualifications for credits to existing agreements, and, therefore, involved no unconstitutional retroactive application. *Id.* Implicit in these opinions was recognition that signed agreements already in effect under existing statutes created vested, contractual rights which could not be altered by the proposed amendatory legislation. Therefore, as to the first part of the Contract Clause analysis, the agreements between producers and the State entered into pursuant to §§ 66-1344(4) and 66-1344.01 constitute binding contracts subject to the Contract Clause.

The second aspect of the Contract Clause inquiry concerns whether the contractual impairment imposed by statute is substantial. Assuming the amended definition of "new ethanol facility" alters existing contractual rights, there appears to be little doubt that, if applied to existing agreements, it would effect a substantial impairment of certain contracts. In particular, producers that have entered into agreements to establish a new ethanol facility qualifying for credits based on meeting the minimum production rate of 100,000 gallons annually prior to June 30, 2004, and currently eligible to receive credits based on facility expansion after that date, would face a substantial impairment of their existing agreements under LB 479, as amended. The amendment would in effect nullify their ability to qualify for millions of dollars of credits which they are currently eligible to receive if they timely meet the current minimum 100,000 gallon production threshold and expand capacity after June 30, 2004, pursuant to agreements with the Tax Commissioner entered into under existing law. Producers entering into such agreements have undoubtedly made financial decisions and commitments in reliance on these agreements. It is difficult to envision how application of LB 479, as amended, to alter these agreements, cannot be viewed as a "substantial" impairment.

The third aspect of the Contract Clause analysis is whether a significant and legitimate public purpose justifies the impairment. The only seeming justification for the amendment is concern that the number of producers that have entered into agreements with the State under §§ 66-1344(4) and 66-1344.01 (including those that have agreed to meet only the minimum threshold by June 30, 2004, and to qualify for further credits based on facility expansion after that date) is greater than anticipated, and that this will result in the State incurring a substantially larger responsibility to provide a mechanism to fund credits under the Act than originally envisioned by the Legislature. Difficulty in finding legislative solutions to funding the State's obligations under existing contracts entered into under

§§ 66-1344(4) and 66-1344.01 does not appear to be a significant, legitimate public purpose to justify altering existing agreements with producers and the State. This is particularly true where, as here, the contractual obligations involve the State's own financial self-interest.

III. Conclusion

In sum, we conclude that LB 479, as amended, which alters the definition of a "new ethanol production facility" eligible for ethanol tax credits under § 66-1344(4) to prevent facilities meeting the minimum production rate on the date required under current law from qualifying for credits based on facility expansion after that date, likely creates an unconstitutional impairment of contracts between the State and producers that have been executed under existing law. Our conclusion is based on a finding that the proposed amendment does not appear to merely clarify or interpret existing law, but, in fact, attempts to retroactively change vested rights of producers that have entered into agreements with the State. The statute authorizing execution of these agreements specifically binds the State to provide such credits under the law in effect at the time of execution of the agreements. While an argument could be advanced to support concluding that the amendment merely clarifies or interprets the law under which the agreements were executed, limiting eligibility to receive credits to facilities completed and at full capacity as of June 30, 2004, without regard to subsequent expansion, we believe it is doubtful that a court would find that the amendment does not unconstitutionally impair vested, contractual rights.

¹ The credits provided under subsection (4) of § 66-1344 were part of 2001 Neb. Laws, LB 536.

² A list of producers entering into agreements with the Tax Commissioner found on the Department of Revenue's web site indicates several agreements have been executed which provide for production at the 100,000 gallon annual rate threshold followed by an increase in plant capacity. See http://www.revenue.state.ne.us/fuels/eth_list.htm.

³ The original bill was amended to reduce the amount of the credit for new facilities to 18 cents per gallon of ethanol produced. Neb. Rev. Stat. § 66-1344(4)(a) (Cum. Supp. 2002).

⁴ During floor debate, it was noted that construction of only two new ethanol production plants was anticipated, and that the funding mechanism was designed based on this assumption. Floor Debate on LB 536, 97th Leg., 1st Sess., 8290 (May 24, 2001).

⁵ The Nebraska Supreme Court follows essentially the same analysis to claims of contractual impairment under Neb. Const. art. I, § 16, as is applied to impairment of contract claims asserting violations of U. S. Const. art. I, § 10. See *Pick v. Nelson*, 247 Neb. 487, 528 N.W.2d 309 (1995).

Sincerely,
JON BRUNING
Attorney General
(Signed) L. Jay Bartel
Assistant Attorney General

pc: Patick O'Donnell
Clerk of the Legislature
07-77-21

UNANIMOUS CONSENT - Add Cointroducers

Senator Burling asked unanimous consent to have his name added as cointroducer to LB 916. No objections. So ordered.

Senator Johnson asked unanimous consent to have his name added as cointroducer to LB 1054. No objections. So ordered.

Senator Price asked unanimous consent to have her name added as cointroducer to LB 1142. No objections. So ordered.

WITHDRAW - Cointroducer

Senator Bourne withdrew his name as cointroducer to LB 870.

VISITORS

Visitors to the Chamber were Steve, Claudia, and Etienne Brock from Omaha; and Brian Elliott from Wahoo.

ADJOURNMENT

At 12:05 p.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Monday, February 9, 2004.

Patrick J. O'Donnell
Clerk of the Legislature